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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re ALEXIS T. et al, Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

C. W.,

Defendant and Appellant.

D056033

(Super. Ct. No. J516633A/B)

APPEAL from orders of the Superior Court of San Diego County, Martin W.

Staven, Judge. Affirmed.

C.W. appeals orders terminating her parental rights to her children, Alexis T. and Brandon T. (together the children.) She contends the court erred by not applying the beneficial parent-child relationship exception to termination of parental rights and

adoption of Welfare and Institutions Code¹ section 366.26, subdivision (c)(1)(B)(i). She argues the evidence showed she and the children share beneficial parent-child bonds and the advantages to them of maintaining the relationships outweigh the benefits of adoption. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

On April 26, 2007, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of three-year-old Alexis and one-year-old Brandon under section 300, subdivision (b), alleging they had been exposed to domestic violence between their parents, Christopher T. and C.W. (together the parents). C.W. said the violence had been ongoing for seven years; Christopher minimized it and blamed it on C.W.'s mental illness. The court ordered the children detained.

In June 2007 the court found the allegations true, declared the children dependents of the court and removed them from the parents. It ordered C.W. and Christopher to comply with their case plans, C.W. to undergo a psychological evaluation, and that visits be supervised and the parents not visit together. The children were placed with the paternal grandmother (the grandmother). Both children were diagnosed with autism and global developmental delay, and Alexis with speech delay.

The parents made slow progress with reunification services. The psychologist who evaluated C.W. diagnosed her with major depressive disorder with psychotic

¹ Statutory references are to the Welfare and Institutions Code.

features and recommended she be evaluated for psychotropic medication. She was scheduled to begin drug testing in January 2008.

At hearings in March and August 2008, the court continued services and continued supervised visits.²

For the 18-month hearing the social worker reported C.W. had attended domestic violence treatment for a time, but she was terminated from treatment when she stopped attending. She also stopped therapy and did not drug test. She had positive visits with the children, but missed some visits. In April 2009 she gave birth to a new baby. At the hearing on April 8, 2009, the court terminated services and set the matter for a section 366.26 hearing.

The social worker recommended the court terminate parental rights and order a permanent plan of adoption. She said that according to visitation logs the children often did not respond to the parents, had no reaction when separating from them and looked to the grandmother to meet their needs. She characterized the parents' relationships with the children as that of "friendly visitors." She concluded the children were adoptable. They were attached to the grandmother, the grandmother was willing to adopt them and other families were available to adopt children with their characteristics.

On September 23, 2009, C.W. petitioned under section 388, requesting the court vacate the setting of the section 366.26 hearing and place the children in her care, or, in

² This court affirmed the orders from the March 12, 2008, six-month review hearing in a nonpublished opinion, *In re Alexis T.* (Aug. 14, 2008, D052669).

the alternative, reinstate reunification services. She argued she was participating in services related to her new baby and making progress toward reunification.

On October 7, 2009, the court summarily denied the petition. For the section 366.26 hearing, the social worker agreed C.W. loved the children and they seemed to enjoy her visits. The social worker also said C.W. had not been involved in meeting the children's needs since they had been in the grandmother's care.

After hearing argument, the court found the children were adoptable and none of the statutory exceptions to termination of parental rights and adoption were present. The court terminated parental rights and referred the matter for adoption.

DISCUSSION

C.W. contends the court erred by terminating her parental rights because the record showed Alexis and Brandon had beneficial parent-child bonds with her and the advantages to them of maintaining those bonds outweighed the benefits of adoption. She argues that before the dependency she was the children's primary caregiver, and after they became dependents she showed her love for them, demonstrated her parenting skills and maintained their close relationships.

I. *Legal Authority*

Adoption is the permanent plan favored by the Legislature. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 573.) If the court finds by clear and convincing evidence that a child is adoptable, it becomes the parent's burden to show that termination of parental rights would be detrimental to the child because a specified statutory exception exists. (*Id.* at p. 574.) Under the exception found in section 366.26, subdivision (c)(1)(B)(i), the

parent is required to show termination would be detrimental in that "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." In *In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534, the court noted "[c]ourts have required more than just 'frequent and loving contact' to establish the requisite benefit for [the] exception."

In reviewing whether there is sufficient evidence to support the trial court's finding, the appellate court reviews the evidence in the light most favorable to the trial court's order, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order. (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.)

II. Application

The Agency argues C.W. has forfeited the issue she raises because at the hearing she did not elicit any testimony regarding the statutory exceptions to termination of parental rights and adoption. Assuming C.W. has preserved the issue, we hold she has not shown error by the court not applying the beneficial parent-child relationship exception to termination of parental rights and adoption.

C.W. showed the first prong of the beneficial parent-child relationship exception by visiting the children on a fairly regular basis throughout the time of the dependency. However, she did not meet the second prong, that her relationship with the children was so beneficial to them that it outweighed the advantages they would gain from being adopted.

C.W. did not show she fulfilled a parental role or that the children would be harmed by termination of her parental rights. During visits the children were often indifferent to her. When she showed them affection, they usually had to be prompted to respond. They did not readily interact with her and showed no signs of emotion when visits ended. We reject C.W.'s argument that the court erroneously disregarded the impact the children's autism made on their interactions and communications with her. The record indicates the court took proper account of the children's autism. Moreover, the social worker reported the children appeared to be developing attachments to the grandmother and they looked to her to fulfill their needs. C.W. has not shown error.

C.W. relies on *In re S.B.* (2008) 164 Cal.App.4th 289, a case from this court, to support her argument the court should have applied the beneficial parent-child relationship exception. In *In re S.B.*, we reversed the trial court's finding that the beneficial parent-child relationship exception did not apply after concluding the child would be greatly harmed by loss of the significant positive relationship she shared with her father. The father had complied with every aspect of his case plan, frequently visited his daughter and was devoted to her. She loved him and wanted to live with him. (*Id.* at pp. 294-295.) C.W. did not make such a showing. Further, while factual comparisons between cases provide insight, these comparisons are not dispositive. The determination on appeal is whether there is substantial evidence to support the trial court's findings that the beneficial parent-child relationship exception did not apply. We conclude that on the facts of this case, the court's findings are fully supported.

DISPOSITION

The orders are affirmed.

NARES, Acting P. J.

WE CONCUR:

HALLER, J.

McDONALD, J.